

Calendar No. 817

108TH CONGRESS
2^D SESSION

S. 1153

[Report No. 108-419]

To amend title 38, United States Code, to permit medicare-eligible veterans to receive an out-patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2003

Mr. SPECTER (for himself, Mr. BOND, Ms. COLLINS, Mr. CHAMBLISS, Mr. COCHRAN, Ms. SNOWE, Mr. SMITH, and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

NOVEMBER 19, 2004

Reported by Mr. SPECTER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend title 38, United States Code, to permit medicare-eligible veterans to receive an out-patient medication benefit, to provide that certain veterans who receive such benefit are not otherwise eligible for medical care and services from the Department of Veterans Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Prescription
 5 Drugs Assistance Act”.

6 **SEC. 2. ELIGIBILITY OF MEDICARE-ELIGIBLE VETERANS**
 7 **FOR OUT-PATIENT MEDICATION BENEFIT.**

8 (a) RESTATEMENT OF CURRENT LAW ON DRUGS
 9 AND MEDICATIONS AND PROVISION OF OUT-PATIENT
 10 MEDICATION BENEFIT.—Chapter 17 of title 38, United
 11 States Code, is amended by inserting after section 1710B
 12 the following new section:

13 **“§ 1710C. Drugs and medications; vaccines**

14 “(a)(1) The Secretary shall furnish to each veteran
 15 who is receiving additional compensation or allowance
 16 under chapter 11 of this title, or increased pension as a
 17 veteran of a period of war, by reason of being permanently
 18 housebound or in need of regular aid and attendance, such
 19 drugs and medicines as may be ordered on prescription
 20 of a duly licensed physician as specific therapy in the
 21 treatment of any illness or injury suffered by such veteran.

22 “(2) The Secretary shall continue to furnish such
 23 drugs and medicines ordered under paragraph (1) to any
 24 such veteran in need of regular aid and attendance whose
 25 pension payments have been discontinued solely because

1 such veteran's annual income is greater than the applica-
 2 ble maximum annual income limitation, but only so long
 3 as such veteran's annual income does not exceed such
 4 maximum annual income limitation by more than \$1,000.

5 “(b)(1) Any medicare-eligible veteran may elect to be
 6 furnished by the Secretary, on an out-patient basis, such
 7 drugs and medicines as may be ordered on prescription
 8 of a duly licensed physician as specific therapy in the
 9 treatment of any illness or injury suffered by such veteran.

10 “(2) In this subsection, the term ‘medicare-eligible
 11 veteran’ means any veteran who—

12 “(A) is entitled to or enrolled in hospital insur-
 13 ance benefits under part A of title XVIII of the So-
 14 cial Security Act (42 U.S.C. 1395 et seq.); or

15 “(B) is enrolled in the supplementary medical
 16 insurance program under part B of such title (42
 17 U.S.C. 1395j et seq.).

18 “(3) The Secretary shall furnish to any veteran who
 19 makes an election under paragraph (1), on an out-patient
 20 basis, such drugs and medicines as may be ordered on pre-
 21 scription of a duly licensed physician as specific therapy
 22 in the treatment of any illness or injury suffered by such
 23 veteran.

24 “(4)(A) Notwithstanding any other provision of law
 25 and except as provided in subparagraph (B), a veteran

1 who makes an election under paragraph (1) shall not be
2 eligible for care and services under this chapter during the
3 year covered by the election.

4 “(B) Subparagraph (A) shall not apply with respect
5 to any veteran who has a compensable service-connected
6 disability.

7 “(5) The furnishing of drugs and medicines under
8 this subsection shall be subject to the provisions of section
9 1722A(b) of this title.

10 “(6)(A) An election under paragraph (1) shall be for
11 a calendar year, and shall be irrevocable for the year cov-
12 ered by such election. An election may be renewed.

13 “(B) The Secretary shall prescribe the form, manner,
14 and timing of an election.

15 “(7) Before permitting a veteran to make an election
16 under paragraph (1), the Secretary shall provide the vet-
17 eran such educational materials and other information on
18 the furnishing and receipt of drugs and medicines under
19 this subsection as the Secretary considers appropriate to
20 inform the veteran of the benefits and costs of being fur-
21 nished drugs and medicines under this subsection, includ-
22 ing materials and information on the consequences of
23 making an election under paragraph (1) and on the fees,
24 copayments, or other amounts required under section

1 1722A(b) of this title for drugs and medicines furnished
 2 under this subsection.

3 “(c)(1) In order to assist the Secretary of Health and
 4 Human Services in carrying out national immunization
 5 programs under other provisions of law, the Secretary may
 6 authorize the administration of immunizations to eligible
 7 veterans who voluntarily request such immunizations in
 8 connection with the provision of care for a disability under
 9 this chapter in any Department health care facility.

10 “(2) Any immunization under paragraph (1) shall be
 11 made using vaccine furnished by the Secretary of Health
 12 and Human Services at no cost to the Department. For
 13 such purpose, notwithstanding any other provision of law,
 14 the Secretary of Health and Human Services may provide
 15 such vaccine to the Department at no cost.

16 “(3) Section 7316 of this title shall apply to claims
 17 alleging negligence or malpractice on the part of Depart-
 18 ment personnel granted immunity under such section.”.

19 (b) COPAYMENT REQUIREMENTS.—

20 (1) IN GENERAL.—Section 1722A of such title
 21 is amended—

22 (A) in subsection (a)(1), by inserting
 23 “(other than a veteran covered by subsection
 24 (b))” after “require a veteran”;

1 ~~(B)~~ by redesignating subsections ~~(b)~~, ~~(c)~~,
 2 and ~~(d)~~, as subsections ~~(c)~~, ~~(d)~~, and ~~(e)~~, respec-
 3 tively;

4 ~~(C)~~ by inserting after subsection ~~(a)~~ the
 5 following new subsection ~~(b)~~:

6 ~~“(b)(1)~~ In the case of a veteran who is furnished
 7 medications on an out-patient basis under section
 8 1710C(b) of this title, the Secretary shall require the vet-
 9 eran to pay, at the election of the Secretary, one or more
 10 of the following:

11 ~~“(A)~~ An annual enrollment fee in an amount
 12 determined appropriate by the Secretary.

13 ~~“(B)~~ A copayment for each 30-day supply of
 14 such medications in an amount determined appro-
 15 priate by the Secretary.

16 ~~“(C)~~ An amount equal to the cost to the Sec-
 17 retary of such medications, as determined by the
 18 Secretary.

19 ~~“(2)(A)~~ In determining the amounts to be paid by
 20 a veteran under paragraph (1), and the basis of payment
 21 under one or more subparagraphs of that paragraph, the
 22 Secretary shall ensure that the total amount paid by vet-
 23 erans for medications under that paragraph in a year is
 24 not less than the costs of the Department in furnishing
 25 medications to veterans under section 1710C(b) of this

1 title during that year, including the cost of purchasing and
 2 furnishing medications, and other costs of administering
 3 that section.

4 “(B) The Secretary shall take appropriate actions to
 5 ensure, to the maximum extent practicable, that amounts
 6 paid by veterans under paragraph (1) in a year are equal
 7 to the costs of the Department referred to in subpara-
 8 graph (A) in that year.

9 “(3) In determining amounts under paragraph (1),
 10 the Secretary may take into account the following:

11 “(A) Whether or not the medications furnished
 12 are generic medications or brand name medications.

13 “(B) Whether or not the medications are fur-
 14 nished by mail.

15 “(C) Whether or not the medications furnished
 16 are listed on the National Prescription Drug For-
 17 mulary of the Department.

18 “(D) Any other matters the Secretary considers
 19 appropriate.

20 “(4) The Secretary may from time to time adjust any
 21 amount determined by the Secretary under paragraph (1),
 22 as previously adjusted under this paragraph, in order to
 23 meet the purpose specified in paragraph (2).”; and

24 (D) in subsection (d), as so redesignated—

- 1 (i) by striking “subsection (a)” and
 2 inserting “subsections (a) and (b)”; and
 3 (ii) by striking “subsection (b)” and
 4 inserting “subsection (c)”.

5 (2) DEPOSIT OF COLLECTIONS IN MEDICAL
 6 CARE COLLECTIONS FUND.—Paragraph (4) of sec-
 7 tion 1729A(b) of such title is amended to read as
 8 follows:

9 “(4) Subsection (a) or (b) of section 1722A of
 10 this title.”.

11 (c) CONFORMING AMENDMENTS.—(1) Section 1707
 12 of such title is amended by adding at the end the following
 13 new subsection:

14 “(c) Notwithstanding any other provision of law, a
 15 veteran who makes an election authorized by section
 16 1710C(b) of this title (other than a veteran covered by
 17 paragraph (4)(B) of that section) shall not, for the period
 18 of such election, be eligible for care and services under
 19 this chapter, except as provided in that section.”.

20 (2) Section 1712 of such title is amended by striking
 21 subsections (d) and (e).

22 (d) CLERICAL AMENDMENTS.—(1) The heading for
 23 section 1712 of such title is amended to read as follows:

1 **~~“§ 1712. Dental care”.~~**

2 ~~(2)~~ The table of sections at the beginning of chapter
3 17 of such title is amended—

4 ~~(A)~~ by inserting after the item relating to sec-
5 tion ~~1710B~~ the following new item:

“~~1710C. Drugs and medications; vaccines.~~”;

6 and

7 ~~(B)~~ by striking the item relating to section
8 ~~1712~~ and inserting the following new item:

“~~1712. Dental care.~~”.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Veterans Prescription*
11 *Drugs Assistance Act”.*

12 **SEC. 2. ELIGIBILITY OF MEDICARE-ELIGIBLE VETERANS**
13 **FOR OUT-PATIENT MEDICATION BENEFIT.**

14 ~~(a)~~ *RESTATEMENT OF CURRENT LAW ON DRUGS AND*
15 *MEDICATIONS AND PROVISION OF OUT-PATIENT MEDICA-*
16 *TION BENEFIT.—Chapter 17 of title 38, United States Code,*
17 *is amended by inserting after section 1710B the following*
18 *new section:*

19 ***“§ 1710C. Drugs and medications; vaccines***

20 ~~“(a)(1)~~ *The Secretary shall furnish to each veteran*
21 *who is receiving additional compensation or allowance*
22 *under chapter 11 of this title, or increased pension as a*
23 *veteran of a period of war, by reason of being permanently*
24 *housebound or in need of regular aid and attendance, such*

1 *drugs and medicines as may be ordered on prescription of*
 2 *a duly licensed physician as specific therapy in the treat-*
 3 *ment of any illness or injury suffered by such veteran.*

4 “(2) *The Secretary shall continue to furnish such drugs*
 5 *and medicines ordered under paragraph (1) to any such*
 6 *veteran in need of regular aid and attendance whose pen-*
 7 *sion payments have been discontinued solely because such*
 8 *veteran’s annual income is greater than the applicable max-*
 9 *imum annual income limitation, but only so long as such*
 10 *veteran’s annual income does not exceed such maximum an-*
 11 *nual income limitation by more than \$1,000.*

12 “(b)(1) *Any medicare-eligible veteran may elect to be*
 13 *furnished by the Secretary, on an out-patient basis, such*
 14 *drugs and medicines as may be ordered on prescription of*
 15 *a duly licensed physician as specific therapy in the treat-*
 16 *ment of any illness or injury suffered by such veteran.*

17 “(2) *In this subsection, the term ‘medicare-eligible vet-*
 18 *eran’ means any veteran who—*

19 “(A) *is entitled to or enrolled in hospital insur-*
 20 *ance benefits under part A of title XVIII of the Social*
 21 *Security Act (42 U.S.C. 1395 et seq.); or*

22 “(B) *is enrolled in the supplementary medical*
 23 *insurance program under part B of such title (42*
 24 *U.S.C. 1395j et seq.).*

1 “(3) *The Secretary shall furnish to any veteran who*
2 *makes an election under paragraph (1), on an out-patient*
3 *basis, such drugs and medicines as may be ordered on pre-*
4 *scription of a duly licensed physician as specific therapy*
5 *in the treatment of any illness or injury suffered by such*
6 *veteran.*

7 “(4)(A) *Notwithstanding any other provision of law*
8 *and except as provided in subparagraph (B), a veteran who*
9 *makes an election under paragraph (1) shall not be eligible*
10 *for care and services under this chapter during the year*
11 *covered by the election.*

12 “(B) *Subparagraph (A) shall not apply with respect*
13 *to any veteran who has a compensable service-connected dis-*
14 *ability.*

15 “(5) *The furnishing of drugs and medicines under this*
16 *subsection shall be subject to the provisions of section*
17 *1722A(b) of this title.*

18 “(6)(A) *An election under paragraph (1) shall be for*
19 *a calendar year, and shall be irrevocable for the year cov-*
20 *ered by such election. An election may be renewed.*

21 “(B) *The Secretary shall prescribe the form, manner,*
22 *and timing of an election.*

23 “(7) *Before permitting a veteran to make an election*
24 *under paragraph (1), the Secretary shall provide the vet-*
25 *eran such educational materials and other information on*

1 *the furnishing and receipt of drugs and medicines under*
2 *this subsection as the Secretary considers appropriate to in-*
3 *form the veteran of the benefits and costs of being furnished*
4 *drugs and medicines under this subsection, including mate-*
5 *rials and information on the consequences of making an*
6 *election under paragraph (1) and on the fees, copayments,*
7 *or other amounts required under section 1722A(b) of this*
8 *title for drugs and medicines furnished under this sub-*
9 *section.*

10 “(c)(1) *In order to assist the Secretary of Health and*
11 *Human Services in carrying out national immunization*
12 *programs under other provisions of law, the Secretary may*
13 *authorize the administration of immunizations to eligible*
14 *veterans who voluntarily request such immunizations in*
15 *connection with the provision of care for a disability under*
16 *this chapter in any Department health care facility.*

17 “(2) *Any immunization under paragraph (1) shall be*
18 *made using vaccine furnished by the Secretary of Health*
19 *and Human Services at no cost to the Department. For such*
20 *purpose, notwithstanding any other provision of law, the*
21 *Secretary of Health and Human Services may provide such*
22 *vaccine to the Department at no cost.*

23 “(3) *Section 7316 of this title shall apply to claims*
24 *alleging negligence or malpractice on the part of Depart-*
25 *ment personnel granted immunity under such section.”.*

1 **(b) COPAYMENT REQUIREMENTS.**—Section 1722A of
 2 *such title is amended—*

3 (1) *in subsection (a)(1), by inserting “(other*
 4 *than a veteran covered by subsection (b))” after “re-*
 5 *quire a veteran”;*

6 (2) *by redesignating subsections (b) and (c) as*
 7 *subsections (c) and (d), respectively; and*

8 (3) *by inserting after subsection (a) the following*
 9 *new subsection (b):*

10 “(b)(1) *In the case of a veteran who is furnished medi-*
 11 *cations on an out-patient basis under section 1710C(b) of*
 12 *this title, the Secretary shall require the veteran to pay,*
 13 *at the election of the Secretary, one or more of the following:*

14 “(A) *An annual enrollment fee in an amount de-*
 15 *termined appropriate by the Secretary.*

16 “(B) *A copayment for each 30-day supply of*
 17 *such medications in an amount determined appro-*
 18 *priate by the Secretary.*

19 “(C) *An amount equal to the cost to the Sec-*
 20 *retary of such medications, as determined by the Sec-*
 21 *retary.*

22 “(2)(A) *In determining the amounts to be paid by a*
 23 *veteran under paragraph (1), and the basis of payment*
 24 *under one or more subparagraphs of that paragraph, the*
 25 *Secretary shall ensure that the total amount paid by vet-*

1 *erans for medications under that paragraph in a year is*
2 *not less than the costs of the Department in furnishing*
3 *medications to veterans under section 1710C(b) of this title*
4 *during that year, including the cost of purchasing and fur-*
5 *nishing medications, and other costs of administering that*
6 *section.*

7 “(B) *The Secretary shall take appropriate actions to*
8 *ensure, to the maximum extent practicable, that amounts*
9 *paid by veterans under paragraph (1) in a year are equal*
10 *to the costs of the Department referred to in subparagraph*
11 *(A) in that year.*

12 “(3) *In determining amounts under paragraph (1), the*
13 *Secretary may take into account the following:*

14 “(A) *Whether or not the medications furnished*
15 *are generic medications or brand name medications.*

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17 *nished by mail.*

18 “(C) *Whether or not the medications furnished*
19 *are listed on the National Prescription Drug For-*
20 *mulary of the Department.*

21 “(D) *Any other matters the Secretary considers*
22 *appropriate.*

23 “(4) *The Secretary may from time to time adjust any*
24 *amount determined by the Secretary under paragraph (1),*

1 *as previously adjusted under this paragraph, in order to*
 2 *meet the purpose specified in paragraph (2).”.*

3 (c) *CONFORMING AMENDMENTS.—(1) Section 1707 of*
 4 *such title is amended by adding at the end the following*
 5 *new subsection:*

6 “(c) *Notwithstanding any other provision of law, a*
 7 *veteran who makes an election authorized by section*
 8 *1710C(b) of this title (other than a veteran covered by para-*
 9 *graph (4)(B) of that section) shall not, for the period of*
 10 *such election, be eligible for care and services under this*
 11 *chapter, except as provided in that section.”.*

12 (2) *Section 1712 of such title is amended by striking*
 13 *subsections (d) and (e).*

14 (d) *CLERICAL AMENDMENTS.—(1) The heading of sec-*
 15 *tion 1712 of such title is amended to read as follows:*

16 **“§ 1712. Dental care”.**

17 (2) *The table of sections at the beginning of chapter*
 18 *17 of such title is amended—*

19 (A) *by inserting after the item relating to section*
 20 *1710B the following new item:*

“1710C. Drugs and medications; vaccines.”;

21 *and*

22 (B) *by striking the item relating to section 1712*
 23 *and inserting the following new item:*

“1712. Dental care.”.

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